

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

WAVE NEUROSCIENCE, INC. a Delaware
Corporation,

Plaintiff,

vs.

BRAIN FREQUENCY LLC, a Texas Limited
Liability Company

Defendant.

Case No. 5:23-CV-00626-XR

Honorable: Xavier Rodriguez

**DECLARATION OF J. RICK TACHÉ IN SUPPORT OF PLAINTIFF’S OPPOSED
MOTION TO STRIKE THE DECLARATION OF DR. JARED DEMPSEY**

I, J. Rick Taché, declare as follows:


1. I am an attorney duly approved to practice law in the State of California and, for purposes of this case, admitted *pro hac vice* to practice law in the State of Texas. I am a shareholder at the law firm of Buchalter, counsel for Plaintiff Wave Neuroscience, Inc. in this action. The facts stated herein are within my personal knowledge and if called upon to testify I can truthfully and competently do so as to all matters herein. This declaration is submitted in support of Plaintiff’s Motion to Strike the Declaration of Dr. Jared Dempsey submitted by Brain Frequency LLC in support of its Opening Claim Construction Brief.

2. The following is a true and correct portion of Trac9.com’s website, from <https://trac9.com/> (last visited May 30, 2024), showing it “work[s] with” Windmill Wellness:



3. The “Windmill Wellness” emblem in the above excerpt is hyperlinked, and when clicked, it takes you to the website for Windmill Wellness Ranch website at <https://windmillwellnessranch.com/> (last visited May 30, 2024).

4. Attached hereto as **Exhibit A** is a true and correct copy of the Texas Franchise Tax Public Information Report for Windmill Wellness Ranch LLC for the reporting year 2022, dated May 12, 2022. Below is a true and correct excerpt of the report, identifying the President and a Director as Shannon Malish and a Director as Julia Cline-Sellers:

Texas Franchise Tax Public Information Report									
To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions									
This report MUST be signed and filed to satisfy franchise tax requirements									
 05-102 Comptroller of Public Accounts FORM (Rev. 9-11/30)		Tcode 13196 Franchise							
Taxpayer number <div>3 2 0 6 2 5 6 2 2 9 6</div>					Report year <div>2 0 2 2</div>		You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.		
Taxpayer name WINDMILL WELLNESS RANCH LLC									
Mailing address 26229 N CRANES MILL RD									
City CANYON LAKE		State TX		ZIP Code 78133		Plus 4 0802624500		Secretary of State (SOS) file number or Comptroller file number	
Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.									
Principal office _____									
Principal place of business _____									
Please sign below! Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.									
SECTION A Name, title and mailing address of each officer, director or manager.									
Name JULIA CLINE-SELLERS		Title DIRECTOR		Director <input checked="" type="radio"/> YES		Term expiration <div>m m d d y y</div>		3206256229622	
Mailing address 1267 KINGS POINT DR		City CANYON LAKE		State TX		ZIP Code 78133			
Name SHANNON MALISH		Title DIRECTOR		Director <input checked="" type="radio"/> YES		Term expiration <div>m m d d y y</div>			
Mailing address 110 CLEAR POND		City SPRING BRANCH		State TX		ZIP Code 78070			
Name SHANNON MALISH		Title PRESIDENT		Director <input type="radio"/> YES		Term expiration <div>m m d d y y</div>			
Mailing address 110 CLEAR POND		City SPRING BRANCH		State TX		ZIP Code 78070			

5. Attached hereto as **Exhibit B** is a true and correct copy of the Texas Franchise Tax Public Information Report for Brain Frequency LLC for the reporting year 2023, dated May 12,

2023. Below is a true and correct excerpt of the report, identifying as Members Shannon Malish and Julia Cline:

Texas Franchise Tax Public Information Report
To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions
This report **MUST** be signed and filed to satisfy franchise tax requirements

05-102 (Rev. 9-11/30)
Tcode 13196 Franchise

■ Taxpayer number **3 2 0 7 4 2 4 1 1 5 2** ■ Report year **2 0 2 3** **You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.**

Taxpayer name **BRAIN FREQUENCY LLC**

Mailing address **26229 N CRANES MILL RD # FH**

City **CANYON LAKE** State **TX** ZIP Code **78133** Plus 4 **0803617643**

Secretary of State (SOS) file number or Comptroller file number

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

Principal place of business

Please sign below! Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.

SECTION A Name, title and mailing address of each officer, director or manager.

Name	Title	Director	Term expiration
JULIA CLINE	MEMBER	<input type="radio"/> YES	m m d d y y
Mailing address 1267 KINGS POINT DR	City CANYON LAKE	State TX	ZIP Code 78133
SHANNON MALISH	MEMBER	<input type="radio"/> YES	m m d d y y
Mailing address 113 CLEAR POND COURT	City SPRING BRANCH	State TX	ZIP Code 78133
		<input type="radio"/> YES	m m d d y y
Mailing address	City	State	ZIP Code

6. The following is a true and correct portion of Windmill Wellness Ranch's website, from <https://windmillwellnessranch.com/> (last visited May 28, 2024), posting the results of an "independent study" by Trac9.com:



7. The following is a true and correct portion of Windmill Wellness Ranch's website, from <https://windmillwellnessranch.com/about/best-outcomes-in-the-nation> (last visited May 29, 2024), stating that it employs Trac9.com for tracking metrics:

To that end, we employ meticulous independent third party tracking of our success metrics with Trac9, and have consistently found the Windmill Wellness approach surpasses those of other treatment centers.

8. From May 30 through June 4, 2024, our office met and conferred with counsel for Brain Frequency, raising perceived issues with Dr. Dempsey's Declaration concerning his lack of experience with TMS technology, that his testimony is conclusory and unsupported, and that as a result of his company's (Trac9) business relationship with Windmill Wellness ranch, his opinions are biased. Attached hereto as **Exhibit C** is a true and correct copy of the correspondences sent to and received from counsel for Brain Frequency. Those correspondences include the following:

a. On May 30, 2024, at the request of counsel for Brain Frequency, our office provided authorities and some bases of its intended motion to strike, including that Brain Frequency had the burden of proof to demonstrate Dr. Dempsey qualifies as a POSITA, but that the record did not support a showing he possesses advanced training and experience with EEG or TMS Technology.

b. On June 3, 2024, our office received a correspondence from counsel for Brain Frequency (John Saba Dr.) summarily stating "Dr, Dempsey is qualified to render his opinions as a POSITA" and attaching "[a]s a courtesy . . . a more detailed c.v. for [our] consideration." Attached hereto as **Exhibit D** is a true and correct copy Dr. Dempsey's revised curriculum vitae.

c. On review, Dr. Dempsey's revised curriculum vitae included one additional entry that, on its face, might relate to TMS technology. That entry is as follows:

ACTIVE RESEARCH PROJECTS

Study of TMS as Addiction Treatment

Institutional Review Board: Advarra IRB # Pro00061473

6100 Merriweather Dr., Suite 600

Columbia, MD 21044

Principal Investigator: **Jared P. Dempsey**

Funding Dates: May 2022 – April 2024

Status: Data collection complete. Publication in progress.

See Ex. D.

d. On June 3, 2024, Because Dr. Dempsey’s revised curriculum vitae again, on its face, does not demonstrate training and experience related to EEG or TMS technology, our office requested additional information, including: 1. The nature of the study; 2. Dr. Dempsey’s role in developing the project; 3. Dr. Dempsey’s involvement in running the project; 4. Hours Dr. Dempsey has worked on the project; 5. Other persons named as researchers with the project and their roles; and 5. A copy of the current draft publication for the study. The intent behind these requests was to flesh out whether the study offered by Brain Frequency as establishing Dr. Dempsey as having the necessary training and experienced actually evidenced that claim.

e. On June 4, 2024, counsel for Brain Frequency responded, stating it had provided Dr. Dempsey’s qualifications pursuant to Rule 26, and refused to provide the requested materials. Rather, counsel again summarily stated Dr. Dempsey is qualified, withholding some of the requested information on the purported bases “the information and details of the study are sensitive and confidential.”

9. Because the current state of the record does not support Dr. Dempsey as having “advanced training and experience in use of either EEG or TMS technology, and because counsel for Brain Frequency either is unable to or refuses to provide Wave with the information it believes is necessary to demonstrate Dr. Dempsey has the requisite knowledge, skill, training, or education

to opine as a POSITA, Wave finds it necessary, despite its efforts to avoid this result, to file the instant Motion to Strike.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 5, 2024.

By: /s/ J. Rick Taché
J. Rick Taché